

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL THOMAS HOLMAN,

Plaintiff,

-against-

CITY OF NEW YORK  
NYC MEDIA GROUP,

**ANSWER TO  
FIRST AMENDED  
COMPLAINT**

07 CV 9684 (SAS)

Defendants.  
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Defendants CITY OF NEW YORK (the “City”) and NYC MEDIA GROUP (“NYC Media”), by and through their undersigned counsel, for their answer to the first amended complaint of plaintiff MICHAEL THOMAS HOLMAN (“Holman”), alleges:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the amended complaint.
2. Deny the allegations contained in paragraph 2 of the amended complaint, except admit that the City is a municipality, a portion of which is located in this judicial district.
3. Deny the allegations contained in paragraph 3 of the amended complaint.
4. Deny the allegations contained in paragraph 4 of the amended complaint, except admit that the amended complaint purports to allege subject matter jurisdiction based on an alleged copyright claim.
5. Deny the allegations contained in paragraph 5 of the amended complaint, except admit that Defendants may be found in the Southern District of New York.
6. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 6 of the amended complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 7 of the amended complaint.

8. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 8 of the amended complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 9 of the amended complaint.

10. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the amended complaint.

11. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11 of the amended complaint.

12. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 12 of the amended complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 13 of the amended complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 14 of the amended complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 15 of the amended complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 16 of the amended complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 17 of the amended complaint.

18. No response is required to paragraph 18 of the amended complaint in that it contains no allegations of fact.

19. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 19 of the amended complaint.

20. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 20 of the amended complaint.

21. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 21 of the amended complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 22 of the amended complaint.

23. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 23 of the amended complaint, except admit that Defendants did not obtain any permission directly from the plaintiff.

24. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 24 of the amended complaint, except admit that Defendants received a letter from Plaintiff dated June 18, 2007, and that one frame of footage remained on a page of Defendants' website for a period of time..

25. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 25 of the amended complaint, except admit that Defendants aired a television program entitled "Kela on the Karpet" on multiple occasions in December 2007 and that Defendants did not seek permission directly from Plaintiff to include any footage in that program.

26. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 26 of the amended complaint, except admit that Defendants did not obtain any permission directly from the plaintiff.

27. In response to the allegations incorporated by reference in paragraph 27 of the amended complaint, Defendants repeat and re-allege paragraphs 1 through 26 hereof as if set forth at length herein.

28. Deny the allegations contained in paragraph 28 of the amended complaint.

29. Deny the allegations contained in paragraph 29 of the amended complaint.

30. Deny the allegations contained in paragraph 30 of the amended complaint.

31. Deny the allegations contained in paragraph 31 of the amended complaint.

32. Deny the allegations contained in paragraph 32 of the amended complaint.

33. Deny the allegations contained in paragraph 33 of the amended complaint.

34. Deny the allegations contained in paragraph 34 of the amended complaint.

#### FIRST AFFIRMATIVE DEFENSE

35. The amended complaint fails to state a claim upon which relief can be granted.

#### SECOND AFFIRMATIVE DEFENSE

36. NYC Media is a division of the New York City Department of Information Technology and Telecommunications ("DOITT"), a mayoral agency that as a matter of law is not subject to being sued as a separate juridical entity. As such, NYC Media should be dismissed as a defendant in this action.

#### THIRD AFFIRMATIVE DEFENSE

37. Defendants' alleged conduct constitutes fair use.

FOURTH AFFIRMATIVE DEFENSE

38. Defendants' alleged conduct constitutes a *de minimis* use for which damages, as a matter of law, are not recoverable.

FIFTH AFFIRMATIVE DEFENSE

39. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

40. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

41. Plaintiff's claims are barred, in whole or in part, by the doctrine of acquiescence.

EIGHTH AFFIRMATIVE DEFENSE

42. Plaintiff's claims are barred, in whole or in part, by laches.

NINTH AFFIRMATIVE DEFENSE

43. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

TENTH AFFIRMATIVE DEFENSE

44. Plaintiff is guilty of unclean hands.

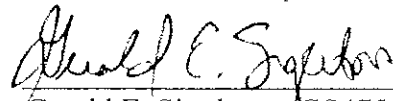
ELEVENTH AFFIRMATIVE DEFENSE

45. Plaintiff lacks standing to pursue the alleged claims.

**WHEREFORE**, Defendants demand judgment in their favor dismissing the amended complaint together with the costs and disbursements of this action and such other and further relief as to the Court may seem just and proper.

Dated: New York, New York  
March 25, 2008

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By:   
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